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IN THE

Supreme Court of the United States

OCTOBER TERM 1965

No. 839

MUTUAL BENEFIT HEALTH AND ACCIDENT ASSOCIATION,

Petitioner,

v.

JOSEPHINE MESSINA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN JOSEPH LEAHY

[illegible]

INDEX

OPINIONS BELOW 2
JURISDICTION 2
QUESTIONS PRESENTED 2
STATEMENT 3
REASONS FOR GRANTING THE WRIT 7
CONCLUSION 16

AUTHORITIES

CASES:

Bank of America v. Parnell, 352 U.S. 29 15
Blake Construction Co. v. United States, 296 F.2d 393 8
Boland v. Love, 222 F.2d 27 13
Brubaker v. United States, 342 F.2d 655 8
Clearfield Trust Co. v. United States, 318 U.S. 363 15
Erie R. Co. v. Tompkins, 304 U.S. 64 . . . . . 12, 14, 15
Fries v. United States, 170 F.2d 726, cert. den., 336 U.S. 954 8
Glick v. Ballentine Products, Inc., 343 F.2d 839 13
Griffin v. McCoach, 313 U.S. 498 . . . . . 12, 13
Huddleston v. Dwyer, 322 U.S. 232 14
Klaxon v. Stentor, 313 U.S. 487 . . . . . 12, 13
Mertens v. Flying Tiger Line, Inc., 341 F.2d 851 13
Muller v. Graban, 346 F.2d 263 13
Myers v. Alvey Ferguson Co., 331 F.2d 223 13
Phelan v. Middle States Oil Corp., 220 F.2d 593, cert. den., Cohen v. Glass, 349 U.S. 929 14
R.F.C. v. Martin Dennis Co., 195 F.2d 698 8
Rutas Aereas Nacionales, S.A. v. Robinson, 339 F.2d 265 13

Sutton v. United States, 256 F.2d 186 8
Swift v. Tyson, 16 Pet. 1 15
The Floyd Acceptances, 7 Wall. 666, 676, 677 8
United States v. Hoffart, 256 F.2d 186 9
United States v. Holley, 199 F.2d 575 8
United States v. North American Co., 253 U.S. 330 8
United States v. Willis, 164 F.2d 453 8
United States v. Yazell, 334 F.2d 454, cert. granted, 379 U.S. 957 15
West v. A.T. & T. Co., 311 U.S. 223 14
Whiteside v. United States, 93 U.S. 247 8

CONTENTS OF APPENDIX

Insuring Clause of Policy Sued on . . . . . App. 1
Revocable Permit . . . . . App. 3
Opinion Below Affirming and Dissenting . . . . . App. 11
Memorandum Opinion and Judgment . . . . . App. 20

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mutual Benefit Health and Accident Association, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on June 3, 1965, as amended by an order dated June 8, 1965, to which a petition for rehearing was filed on July 3, 1965, and which was denied by an order dated September 23, 1965.

OPINIONS BELOW

The opinion of the court below (App. 11-19) is reported at 350 F.2d 453. The memorandum opinion and judgment of the District Court on the merits (App. 20-32) is reported at 228 F.Supp. 865.

JURISDICTION

The judgment of the court below (App. 11-19) was entered on June 3, 1965. The denial of the motion for rehearing, timely filed on July 3, 1965, was entered on September 23, 1965. (R. 158) The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the Circuit Court correctly held, in the teeth of many contrary decisions of this Court, and of other Circuit Courts, that an employee of the United States who admittedly did not have actual authority to contract on behalf of the Government for an air taxi flight may, by his apparent authority, justify an air taxi flight purchaser's reliance upon the said employee's authority to contract in behalf of the Military Air Transport Service of the United States (MATS) for such a flight, thereby allegedly making his said flight a covered one under his insurance policy which included flights "by, or contracted for by, MATS."

2. Whether in ruling on a case that has wide and continuing significance to an important aspect of airline travel, the Circuit Court departed from the accepted and usual course of judicial proceedings in affirming, in the words of the dissenting judge, "without undertaking any analysis of the issues."

3. Whether the courts below were correct in holding that the construction and interpretation of a contract of insurance purchased in Japan is to be governed by a transcendental "American Contract law," rather than by the substantive law of a specific state or foreign nation.

STATEMENT

This case in short[1] involves a suit on an insurance policy entered into in Japan between Respondent's husband, Salvatore Messina, and the Petitioner insurance association, whereby Mr. Messina was insured in the now familiar air travel accident insurance policy.

The insured, a civilian employee of the Department of the Army, traveling on government travel orders covering passage to a suburb of Washington, D.C., purchased the policy from an agent of Petitioner at Tachikawa Air Force Base, Japan. (App. 11) The policy, as far as it is here pertinent, insured Mr. Messina's life "while a passenger on scheduled air lines and other specified conveyances." (Bold face type at top of first page of policy. App. 1) At the time, the insured was ticketed only to Travis Air Force Base, California, and it so happened that that leg of his journey was aboard a commercial carrier flight contracted for by the Military Air Transport Service (MATS). (App. 12)

Upon his arrival at Travis, Messina obtained a government transportation request and, with it, a booking for a flight from San Francisco to Washington via United Airlines, a scheduled carrier. To get to San Francisco he chose to purchase with $15 of his own money a ticket for an air taxi flight operated by the Travis Transportation Company, a nonscheduled air taxi carrier. (App. 12) This type of carriage was not included in his travel orders or the Government transportation request. The air taxi crashed, resulting in his death.

The Respondent's complaint alleged that Messina lost his life in a covered flight. (R. 1-2)[2] Through interrog-

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[1] A judicial discussion of the case will be found in the nine page dissenting opinion of Judge Burger. (App. 12-19)

[2] "R", followed by numerals, refers to the page in the record from the Circuit Court of Appeals below.